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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 MICHAEL JIMENEZ,

13 Plaintiff,

CIV. S-99-0908 EJG PAN

14 v.

15 JO ANNE B. BARNHART,
16 Commissioner of Social
Security Administration,

FINDINGS AND RECOMMENDATIONS

17 Defendant.
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19 On November 12, 2002, this court vacated its judgment in
20 plaintiff's favor entered July 24, 2000, and remanded this case
21 to the Commissioner pursuant to sentence six of 42 U.S.C. §
22 405(g) for consideration of new and material evidence.

23 On July 28, 2004, an administrative law judge rendered a
24 decision adverse to plaintiff on remand. Plaintiff failed to
25 file exceptions with the Appeals Council and the Council did not
26 assume jurisdiction sua sponte. Accordingly, the decision of the

1 administrative law judge became the final decision of the
2 Commissioner on September 1, 2004. 20 C.F.R. §§ 404.984(d),
3 404.984(b), 422.210(c)).

4 As plaintiff did not seek judicial review within the 60-
5 day period accorded by 42 U.S.C. § 405(g) and 20 C.F.R. §
6 422.210(c), he failed to exhaust his administrative remedies and
7 this court is without jurisdiction to review the Commissioner's
8 final decision.

9 On July 11, 2005, the Commissioner filed a status report
10 seeking affirmation of the administrative law judge's decision.
11 Plaintiff has not filed a response.

12 I therefore recommend the Clerk of Court be directed to
13 enter final judgment on behalf of the Commissioner pursuant to
14 sentence four of 42 U.S.C. § 405(g).

15 These findings and recommendations are submitted to the
16 Honorable Lawrence K. Karlton, the United States District Judge
17 assigned to this case. 28 U.S.C. § 636(b)(1). Written
18 objections may be filed within ten days after being served with
19 these findings and recommendations. The document should be
20 captioned "Objections to Magistrate Judge's Findings and
21 Recommendations." The failure to file objections within the
22 specified time may waive the right to appeal the District Court's

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1 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

2 Dated: November 9, 2005.

3 /s/ Peter A. Nowinski

4 PETER A. NOWINSKI

5 Magistrate Judge